

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-848

December 7, 2000

NORTHERN UTILITIES, INC.
Request for Approval of a Firm Gas
Transportation Agreement
(35-A M.R.S.A. § 707)

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We approve Northern Utilities, Inc.'s (Northern) proposed contract with Interstate Brands Corporation (IBC) filed October 11, 2000 but reserve prudence and ratemaking issues for consideration at Northern's next general rate proceeding.

II. PROCEDURAL HISTORY

On October 11, 2000, Northern filed a request for expedited review and approval of a contract with IBC (formerly John J. Nissen Baking Company) pursuant to 35-A M.R.S.A. 703(3).¹ This contract replaces a previous contract between Northern and IBC² that was terminated by IBC on July 1, 2000, pursuant to the terms of the agreement.

With its filing, Northern submitted a Motion for Protective Order seeking confidential treatment for certain terms of the contract and for supporting documents including cost information, financial analyses, and the customer's name. On November 8, 2000, the Hearing Examiner issued Temporary Protective Order No. 1, temporarily granting this confidential treatment. However, by Procedural Order dated November 8, 2000, the Hearing Examiner requested further explanation of why the customer's name should be kept confidential. In its response, Northern indicated that it knew of no harm that would result from release of the customer's name. Consequently, on November 17, 2000, the Hearing Examiner issued Revised Temporary Protective Order No. 1, excluding the customer's name from the information accorded confidential treatment.

On November 16, 2000, the Advisory Staff conducted a technical conference (by telephone) with Northern to further explore the basis for the contract and supporting

¹ Section 703(3) states in part:

It shall be lawful for a public utility to make a contract for a definite term subject to the commission's approval for its product or service, but the published rates shall not be changed during the term of the contract without the commission's consent.

² That contract was approved by the Commission on December 15, 1998 in Docket No. 98-801.

financial analyses and on November 20, 2000, Northern filed responses to the two oral data requests made by the Advisory Staff at the technical conference. The Hearing Examiner orally granted the intervention of the Office of the Public Advocate at the conference. However, the OPA was not represented at the conference.

III. DISCUSSION

Under the special contract, Northern will supply firm transportation service to IBC. IBC will pay a customer charge and a rate per hundred cubic feet (ccf) (both subject to inflation adjustment) and, in lieu of a demand charge, an increase in the volumetric rate under certain conditions. Once the initial contract term expires, the contract may be continued by the parties year to year thereafter. Because the terms of this contract differ from Northern's filed rate schedules and terms and conditions, our approval is required.

Northern asserts that the special contract is necessary to avoid IBC'S bypassing its distribution system and that by entering this agreement, it retains a large volume customer whose revenue contribution will reduce the average unit cost of transportation service, thereby benefiting Northern's other customers. The Advisory Staff has reviewed the contract and the supporting financial analyses to ascertain that the contract rates will exceed the long-run marginal costs of serving this load. Staff also reviews special contract arrangements to confirm that the threat of by-pass is credible.

In this case, Northern essentially relied on the by-pass analysis it developed for this customer two years ago but has not done any significant update of this information. We have no basis in this record to render an opinion on whether the Company's analysis on by-pass is appropriately current and accurate. However, because Northern seeks authority only to enter the contract, reserving ratemaking issues for a later date, we need not reach this issues now. On its face, the threat of bypass Northern asserts appears credible. If we discover evidence to the contrary, we could impute revenues accordingly in a future rate case. Moreover, because this contract is for transportation service only, no concern arises regarding the impact of the price reduction on the reconcilable cost of gas adjustment.

Under these circumstances, we find this arrangement reasonable and approve it for purposes of 35-A M.R.S.A. § 703(3). We reserve all ratemaking and prudence issues for Northern's next general rate proceeding.

Dated at Augusta, Maine, this 7th day of December, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.